

TESTIMONY OF THE NAVAJO NATION

SUBMITTED FOR THE RECORD OF THE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS SUBCOMMITTEE ON TRANSPORTATION, INFRASTRUCTURE, & NUCLEAR SAFETY HEARING ON THE FEDERAL LANDS HIGHWAY PROGRAM AUGUST 8, 2002

Introduction

The Navajo Nation appreciates this opportunity to share its views about what is working within the Indian Reservation Roads (IRR) Program, what is not working, and what this Congress can do to improve transportation in Indian Country. We commend the Federal Highway Administration for its commitment to provide safe and efficient access to Tribal lands. Roads, bridges, and transit quite literally carry people across a network that connects communities, commerce and culture.

As former U.S. Secretary Rodney E. Slater said, "Transportation is the tie that binds us together as a nation." The Indian Reservation Roads Program impacts all people, tribal and non-tribal alike. Tribal Lands provide vitally needed access within and between states, and support a multitude of economic interests including tourism, agriculture, energy production, manufacturing, mineral extraction and timber harvesting.

But progress does not travel down dirt roads and broken bridges. Many people and places in Indian Country still have very poor access to opportunity. A few discreet changes to the Transportation Equity Act for the 21st Century could dramatically help efforts to lift First Americans out of third world conditions, onto the economic status as other communities throughout the United States.

Background

Navajo Nation

The Navajo Reservation is located on 26,109 square miles, or 17.1 million acres within the exterior boundaries of New Mexico, Arizona, and Utah. It is roughly the geographic size of West Virginia. The Navajo Nation's land base also includes three Navajo satellite communities—Alamo, Tohajiilee, and Ramah—located in western and central New Mexico.

With 280,000 members, the Navajo Nation is the largest federally recognized Indian Tribe. Limited availability of housing and employment on the reservation forces people to commute long distances everyday for work, school, health care and basic government services. Seventy-eight percent of the roads within Navajo are unpaved.

According to the 2000 BIA Road Inventory Database, the Navajo IRR system consists of 9,826 miles of public roads. Of that, Navajo Nation must maintain 1,451 miles of paved road, 4,601 miles of gravel and dirt roads. Weather conditions often make many of those roads impassable.

The Navajo Reservation soils have high clay content with less forage. In the winter, snow and rain create Snow and Mud Emergencies that prohibit access even to rescue vehicles. This year, because of the prolonged drought, these roads have become nearly impassable due to sand dunes, rocky surfaces and de

holes.

Not only are impassable roads a consistent problem within Navajo, so are impassable bridges. The Navajo must maintain 173 bridges. 51 bridges have been identified as being deficient, of which 27 bridges need complete replacement and bridges need major rehabilitation.

For people who do not have access to a vehicle, The Navajo Transit System (NTS) currently operates a fleet of 14 buses and 3 vans that carry 6,250 passengers a month, or 75,000 passengers a year. NTS provides public transportation not only to people of Navajo, but also to people of Gallup and Farmington, New Mexico, and Flagstaff and Winslow, Arizona. NTS not only links tribal and non-tribal communities together, but also improves the area's environment, economy and overall quality of life.

Indian Country

The Navajo Nation, like every Tribe, has its own unique challenges. Yet Navajo consistently struggles with three problems that are nearly universal throughout Indian Country: 1) lack of adequate health care; 2) lack of public safety officers; and 3) lack of economic development opportunities. These problems are compounded by the lack of transportation infrastructure within tribal communities.

Health clinics on most reservations tend to be few and far between, where they exist at all. Tribal members, including the elderly, children, and disabled, often must travel hundreds of miles to receive specialized care. Dirt roads, deteriorating paved roads, and treacherous bridges make their long journeys that much more difficult.

Public Safety is also compromised by lack of decent roads and bridges within reservations. Automobile accidents are the number one cause of death among young American Indians. The annual fatality rate on Indian Reservation Roads is more than four times the national average. Bad roads make it very difficult for tribal police, few in numbers, to enforce traffic and other laws in Indian Country.

Lack of adequate vehicle access is also a disincentive for economic development in tribal communities. On a regular basis, several businesses explore the possibility of locating to the Navajo Nation before realizing obstacles including inadequate paved roads. Due to the lack of economic developments and supporting infrastructures, the following facts exist:

- According to 1990 census, which provides the most recent analysis, per capita income American Indians living on reservations is about \$4,500 per year, compared to about nationally. In 1997, the per capita income of Navajo people was \$5,599.

- According to the 1990 census, 51% of American Indians living on reservations lived below the poverty level, as compared to 13% nationally. 56% of Navajo people live below the poverty level.

- Although unemployment in Indian Country fluctuates seasonally, it is greater than 50% annually, as compared to less than 10% nationally. The unemployment rate on the Navajo Nation is about 50%.

National Security

As we all know, since September 11, 2001, Homeland Security has become the national priority. Indian reservation roads and bridges are vitally important to national safety. Tribal transportation infrastructure must be able to carry emergency services, as well as evacuation traffic.

Unfortunately, most tribal transportation infrastructures are not yet up to the task. For example, Arizona Department of Transportation developed an I-40 Emergency Interstate Closure Plan-- which was created to anticipate such pre-September 11 catastrophes as earthquakes and hazardous or radioactive spills that calls for detouring up to 8,000 trucks per day onto Navajo BIA routes. The Navajo bridges onto which traffic would be detoured can only safely accommodate one truck at a time, traveling no faster than 35 mile per hour.

In addition, state highways through Indian Reservation Roads regularly carry hazardous materials. The Navajo Nation serve as a shipment route for hazardous materials. Not all potential routes are paved.

Hazardous waste is carried across the Navajo Nation every day on five different routes:

- I-40 is a main route for hazardous waste;
- U.S. 89 is a main route for transport of organic waste, as well as propane and gasoline shipments;
- U.S. 160 is main route for transport of hazardous waste;
- U.S. 163 is main route for transport of hazardous shipments from Arizona to Utah and Colorado and
- U.S. 666 is highly traveled by vehicles carrying hazardous waste.

Nuclear waste transportation also cuts across Indian Country. In Navajo, I-40 is the main route for high-level radioactive waste transported to or from New Mexico. U.S. 160 is the main route for transport of high-level radioactive waste. When Yucca Mountain Nuclear Waste Storage facility starts accepting waste, much of it will come right through the Navajo Nation. Tribal roads must be constructed, improved and maintained to safely handle such dangerous traffic.

TRANSPORTATION ACT FOR THE 21ST CENTURY

What is Working

Based on its own experience, the Navajo Nation believes that The Transportation Act for the 21st Century (TEA-21), through the Indian Reservation Roads Program, is providing critically needed funding and assistance for reservation and bridge projects in Indian Country. While the IRR Program has its problems, three specific aspects of the Program that are working well for the Navajo people:

1. Relative Needs Formula

- Current distribution is based on formula of "relative needs" of the various Indian Tribes as jointly identified by the Secretary of Transportation and the Secretary of the Interior.
- The Relative Needs Formula currently being used is measurable, verifiable, and equitable: 20% total Indian Population; 30% total vehicle miles traveled; 50% total cost of improvement
- Amount of roads Navajo has constructed or improved from 1992 to 2001 (ISTEA authorizations) is 334 miles of road and 1,988 lineal feet of bridges.

2. Cooperative Funding for School Bus Routes

Agreements entered into between Navajo Nation and counties of Arizona, New Mexico, and Utah have been very successful in fostering coordination and communication for the maintenance of school bus routes.

TEA-21 funds have been used to improve several miles of school bus routes on or near Navajo Nation that could not have been maintained without the funding.

3. Tribal Technical Assistance Program

On September 11 and 12, 2002, the Navajo Nation Department of Transportation and Colorado State University Tribal Technical Assistance Program will co-host the Navajo Nation Transportation Symposium in Flagstaff, Arizona. The Symposium will feature national keynote speakers and training workshops on critical national transportation initiatives.

Such ongoing technical support benefits tribal and non-tribal community alike.

What is Not Working

It is the experience of the Navajo Nation that five specific aspects of the IRR Program are currently undermining the Federal Government's commitment to provide safe and efficient access to tribal lands:

1. Negotiated Rule Making Process:

TEA-21 provides that the Secretary of the Interior shall issue regulations governing the IRR Program and establish a funding distribution formula in accordance with the negotiated rulemaking committee. Of the four workgroups that make up the Negotiated Rulemaking Committee, the workgroup steeped in the controversy is the Funding Formula Workgroup, which has been asked to review and develop possible alternative methods to the current Need Based Formula for distributing funds under the IRR Program.

The Negotiated Rulemaking Process attempt to develop an alternative distribution funding formula has undermined one of the central goals of TEA-21-- to improve the transportation infrastructure of Indian Country.

Alternative distribution efforts have 1) derailed meaningful progress by pitting small tribes against big tribes in a fight over an inadequate budget; 2) delayed disbursement of IRR funds four years straight, in 1999, 2000, 2001, and 2002; and 3) resulted in suspended Indian roads projects and roads employees.

Navajo Nation has long advocated Needs Based Formula for all tribal funding in the interest of fairness and accountability.

The BIA Road Inventory miles used in computing the distribution formula must be true roadway miles accurate and verifiable. The alternative funding formula being sought by small tribes, which advocates "base level funding" and set-asides for non-existent road miles (ghost miles), is neither reasonable nor practicable.

2. Bridge Funding:

The National Bridge Priority Program currently only provides funding for construction of bridges, not funding for such pre-construction activities as planning and design. Monies for pre-construction bridge

activities must be sought from regular IRR funds, where such requests are in direct competition with requests for road construction projects.

The current process is not only cumbersome and unfair, but also risky where replacement rehabilitation of a bridge is an immediate health and safety need.

Bridges within the Navajo Nation must be able to support the traffic of workers, patients, school children, commerce, and hazardous materials.

As of November 10, 1999, 46 bridges within the Navajo Nation were identified as being deficient. The Navajo Nation needs at least \$5.2 million for planning and designing in order for bridges to advance construction.

As Representative Sherwood Boehlert (R, NY) of the House Transportation and Infrastructure Committee stated, “You don’t fix a bridge with good intentions; it takes cold hard cash to pay for rehabilitation or replacement.”

The current Bridge Priority Program does not provide Tribes access to funds to plan for such rehabilitation and replacement.

3. Obligation Limitation:

The current method of redistributing approximately 10% of Federal Lands Highways Program funds to states as Surface Transportation Program funds—commonly known as the “Obligation Limitation” detrimental impact on Tribes and the IRR Program. Because the Indian Reservation Road Program is located within the Federal Lands Highway Program, the Obligation Limitation significantly reduces the availability of critically needed construction funds for developments for all American Indian Tribes. Since Obligation Limitation became applicable on the Indian Reservation Roads Program, the redistribution of funds accumulated to \$129.4 million, of which Navajo Nation could have received \$34 million for construction.

4. Maintenance Funding

Road maintenance is a statutory obligation under 23 U.S.C. Section 116, which is intended to protect investments made with Federal Highway Trust Funds. The scarcity of maintenance funding available to Tribes transforms this statutory obligation into an unmet mandate that tribal governments cannot fulfill. The problem is that Indian Road maintenance is funded not through the IRR Program, but through Department of Interior, which year after year lacks the necessary funding to maintain BIA roads built in Indian Country with IRR Program monies.

The experience of the Navajo Nation is fairly typical. Each year, Navajo submits its annual request for maintenance funding to BIA. Each year, Navajo is only funded at 30% of need.

The Navajo Region Office/Branch of Roads Program is maintaining 6,000 miles of Navajo Region BIA road system but is funded at only \$6 million, or 1/5 of the \$31.66 million needed. The Interior appropriation is only marginal and is not enough to protect the Navajo Nation’s investment in improving its road system by use of the Highway Trust Fund monies paid by tax dollars.

5. Transit Funding

Currently, Tribal Transit Programs receive federal transit funds through distribution from the states. Tribal transit programs are low priority to the states and must compete with state transit programs. In the absence of meaningful access to federal transit dollars, Tribes must use precious Indian Reservation Road Program dollars for Tribal Transit.

Recommendations

1. Increase Annual Appropriation

Increase the Annual Funding Level for the IRR Program from its present level of \$275 million to \$500 million.

Past inadequate funding of IRR Program has created a crisis that can only be ignored at the risk of those travelers who drive 2 billion vehicle miles on the IRR system each year. In its 1999 study of the nation's highways and bridges, the Federal Highway Administration determined that "The annual fatality rate on Indian Reservation Roads is more than four times the average...The estimated backlog of improvement needs for BIA and selected State and Local IRR roads exceeds \$6.8 billion."

The Navajo Nation alone needs \$100 million per year for the next 20 years just to satisfy unmet present and future transportation needs.

2. Remove Obligation Funding

Exempt the Indian Reservation Roads Program from the Obligation Limitation Provision, U.S.C. Section 1102 (f), which created an obligation to redistribute Federal Lands Highway Program funds to the states as Surface Transportation funds. Because the Indian Reservation Road Program is located within the Federal Lands Highway Program, the Obligation Limitation has significantly reduced the availability of construction funds for road developments for all American Indian Tribes. Since 1998, the Obligation Limitation has reduced funding for the Indian Reservation Roads program by about 10% each year.

3. End Bridge Set Aside and Begin Separate Bridge Fund

Permit National Indian Reservation Bridge Priority Program funds be used for pre-construction activities, such as planning and design.

Create a separate source of funding for the National Indian Reservation Bridge Priority Program from the Highway Trust Fund so that bridges do not have to compete with roads under TEA-21.

Provide \$15 million yearly authorized funding level from Highway Trust Fund for fiscal years 2004 through 2009 for Indian Reservation bridge projects.

Expand allowable uses of bridge funding to include inspection, planning, design, engineering and construction of projects to replace and improve bridges on Indian reservations.

The National Bridge Priority Program funding should have a separate funding source rather than the current \$13 million take down from the IRR Program.

4. Increase Ability to Use Funds for Planning Roads

Encourage administrative capacity building within Indian Country by increasing the amount of money Tribes are allowed to use for transportation planning from the current limit of 2% allocated funds to a new limit of 4%. The Transportation Planning funds are essential for a Tribe to be able to compile necessary transportation data and forecast future transportation

needs.

Transportation planning on Indian reservations is needed more than ever because of the growing populations on Indian reservations and because of new national security concerns.

5. Create New Reservation Transit Program.

Establish a new Indian reservation rural transit program with an annual funding level of million per year so that Tribes may apply direct to the Federal Transit Administration competitive grants for rural transit programs on reservations. Currently, Tribes must apply for transit funding to the States within which they are located. This requirement not only puts Tribes at an extreme disadvantage by forcing Tribal transit projects to compete with State projects before a State grant maker, it also violates the government-to-government relationship that exists as a matter of law and policy between the Federal government and Tribes. This relationship, rooted in the Federal Trust Doctrine, has been reaffirmed not only by Executive Order 13175, but also by the November 16, 1999 Order of the Department of Transportation which requires agencies of the U.S. Department of Transportation to build more effective working relationships with Native American tribal governments by, among other things, "Work[ing] with federally recognized tribes and their designated representatives on a government-to-government basis respecting their rights to represent their interests."

6. Provide Additional Funding to Maintain School Bus Routes

Increase annual funding for maintenance of school bus routes on, or near, or adjacent to Indian reservations larger than 10,000,000 acres from current level of \$1.5 million per year so that miles and miles of seasonably unpassable dirt roads do not stand between an American Indian child and an education.

Increase annual authorized funding level to \$3 million in fiscal years 2004 and 2005; \$4 million in fiscal years 2006 and 2007; and \$5 million in fiscal years 2008 and 2009.

7. Reaffirm Funding Distribution Formula

Maintain the Relative Needs Formula that was being used during the ISTEA authorization years at 100% application with no minimum amount per Region. 23 U.S.C. Section 202 (d) requires the IRR Program to distribute program funding based on a negotiated rule making process, which has thus far produced only disagreement.

8. Prohibit the Funding of Ghost Miles

Require both Secretary of Interior and Secretary of Transportation to verify the existence of roads that are part of the Indian Reservation Roads Program to ensure that the distribution of funds to an Indian Tribe is fair, equitable, and based on valid transportation needs.

Distribute funds based on the existence of those roads.

Conclusion

Roads, bridges and transit are lifelines of any community. For tribes, they are crucial and vastly unmet needs, without which economic development is nearly impossible. The Navajo Nation respectfully urges the United States Congress to support the Reauthorization of the Transportation Equity Act of the 21st Century with the above recommendations. It is time for "equity" to mean something in Tribal transportation.

funding. It is time, in this 21st century, for opportunity to be able to travel safely down Indian Reservation Roads, to connect the commerce and culture of tribal and non-tribal communities.